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IN THE

Supreme Court of the United States

October Term, 1961

CROWN ZELLERBACH CORPORATION,
Petitioner,

—against—

FEDERAL TRADE COMMISSION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN THE

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CROWN ZELLERBACH CORPORATION,

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FEDERAL TRADE COMMISSION,

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To The Honorable The Chief Justice and Associate Justices of the Supreme Court of The United States:

Crown Zellerbach Corporation (hereafter "Crown") prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Ninth Circuit affirming an order of the Federal Trade Commission.

The Federal Trade Commission had held that the acquisition by Crown in June 1953 of the stock of St. Helens Pulp & Paper Company (hereafter "St. Helens") violated § 7 of the Clayton Act, as amended, and entered an order of divestiture.

Citations to Opinions Below

The findings, conclusions and order of the Federal Trade Commission Hearing Examiner, dated February 25, 1957, are printed at R. 547-600* and reported at 54 F.T.C. 769. The opinion and order of the Federal Trade Commission, dated December 26, 1957, are printed at R. 603-23 and reported at 54 F.T.C. 798.

The opinion of the Court of Appeals for the Ninth Circuit is printed in the Appendix hereto, pages A-9 through 75, and is reported at 296 F. 2d 800. The opinion of the Court of Appeals denying Crown's petition for rehearing is printed at Appendix A-76 through 82 and is reported at 296 F. 2d 834.

Jurisdiction

The decision of the Court of Appeals was entered on June 5, 1961; the decision denying rehearing was entered on December 22, 1961; the judgment of the Court of Appeals was entered on January 29, 1962. The jurisdiction

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* "R." references are to pages of the certified record as prepared for the use of the Court below (R. 1-5481). "CX" and "RX" references are to the certified exhibits of the Commission and Crown, respectively, as prepared for the use of the Court below. When the exhibit appears in one of the twenty-one sequential exhibit volumes (I-XXI) the exhibit number is followed by a bracketed indication of volume and page (*e.g.*, "CX 51 [VII, 2846]" refers to that portion of Commission's Exhibit 51 found at page 2846 of volume VII in the series). The transcript of record and exhibits have been duly certified and filed with the Clerk of the Court pursuant to Rule 21(3). "A-" references are to the Appendix hereto (A-1 through 84), containing relevant statutory materials and the opinions and decree of the Ninth Circuit.

of this Court is invoked under 15 U.S.C. § 21 (64 Stat. 1126, amended by 73 Stat. 243)* and 28 U.S.C. § 1254.

Questions Presented

1. Whether, in reviewing and affirming a determination of the Federal Trade Commission that an acquisition violated § 7 of the Clayton Act, as amended, a Court of Appeals has rendered a decision in conflict with *S.E.C. v. Chenery Corp.*, 318 U. S. 80 and 332 U. S. 194, and *Erie Sand and Gravel Co. v. FTC*, 291 F. 2d 279 (3rd Cir. 1961), when the Court's affirmance was upon grounds different from those of the Commission in that (a) the Court rejected the Commission's findings as to the relevant line of commerce and the relevant section of the country and, on the basis of the Court's different rationale and its own review of the record made before the Commission, the Court found the relevant line of commerce and section of the country to be different from those found by the Commission, and (b) the Court rejected the Commission's bases for determining that the effect of the acquisition may be substantially to lessen competition, held that different factors should be considered, and made *de novo* findings—which are not supported by substantial evidence—as to the market shares (*i.e.*, sales) of the acquiring, acquired, and competing companies, replacing the production figures relied upon by the Commission and the rejected Commission finding that imports from other parts of the country

* While jurisdiction technically arises under § 11 of the Clayton Act as it read at the commencement of this proceeding, neither the scope of jurisdiction nor any of the matters presented by this petition were affected by the amending language, and references herein will not preserve the distinction between that earlier version and the current 15 U.S.C. § 21.